

Message Text

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ACTION IO-14

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C O N F I D E N T I A L USUN 1009

E.O. 11652: GDS

TAGS: UN PFOR

SUBJ: DEFINITION OF AGGRESSION

REF: USUN 964

1. SMALL NEGOTIATING GROUP OF CONTACT GROUP I IS CONTINUING ITS CONSIDERATION OF ART 2. GROUP HAS DECIDED TO DELETE, AS UNNECESSARY, "HOWEVER" IN LINE 2 AND "AS EVIDENCE" IN LAST LINE; AND TO ADD "BY A STATE" AFTER "ARMED FORCE" IN FIRST LINE, AND AT END OF ART: "AND INCLUDING THE FACT THAT THE ACTS CONCERNED OR THEIR CONSEQUENCES ARE NOT OF SUFFICIENT GRAVITY." SEVERAL DELS CONTINUE TO PRESS FOR DELETION OF "IN CONTRAVENTION OF THE CHARTER" AND "THE PURPOSES OF THE STATES INVOLVED". SOME DELS HAVE HINTED THAT THEY MIGHT ACCEPT "IN CONTRAVENTION OF THE CHARTER" IN RETURN FOR DELETION OF "PURPOSES" LANGUAGE: FOR TIME BEING THIS SUGGESTION HAS NOT BEEN PURSUED. UK PROPOSED FORMULA WHICH WOULD DELETE "IN CONTRAVENTION" LANGUAGE IN RETURN FOR DELETION OF "PRIMA FACIE" LANGUAGE: "THE FIRST USE OF ARMED FORCE SHALL CONSTITUTE EVIDENCE RELEVANT TO THE DETERMINATION WHETHER AN ACT OF AGGRESSION HAS BEEN COMMITTED, PROVIDED..." THIS SEEMED TO ATTRACT SOME DELS, BUT YUGOSLAVIA WAS FIRM IN OPPOSITION.

2. IN MEANTIME, NEGOTIATING GROUP OF CONTACT GROUP II IS
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CONTINUING CONSIDERATION OF ARTS 3 AND 5. GROUP HAS
TENTATIVELY ACCEPTED UK PROPOSAL REDRAFT ART 3(F) AS FOLLOWS:

"THE ACTION OF A STATE IN PERMITTING ITS TERRITORY, WHICH IT HAS PLACED AT THE DISPOSAL OF ANOTHER STATE, TO BE USED IN PERPETRATING AN ACT OF AGGRESSION AGAINST A THIRD STATE."

3. GROUP THEN TURNED TO SECRETARIAT REDRAFT OF ART 5 CONTAINED IN PARA 2 OF REFTL. US AND UK STATED THAT ANY SUCH FORMULA WOULD HAVE TO CONTAIN REFERENCE TO FORCIBLE DEPRIVATION OF RIGHT TO SELF-DETERMINATION AS PRECONDITION TO OPERATION OF ART; THAT REFERENCE TO COLONIAL AND RASCIST REGIMES, ETC., WAS UNNECESSARY AND INCORRECT AS A DESCRIPTION OF THE CIRCUMSTANCES UNDER WHICH SELF-DETERMINATION MIGHT BE DENIED; AND THAT WORD "STRUGGLE" NOT ACCEPTABLE AS USED IN SECRETARIAT FORMULA. GHANA AND EGYPT RESPONDED THAT SECRETARIAT DRAFT WENT TOO FAR IN WESTERN DIRECTION, AND IN PARTICULAR THAT IT SHOULD REFER TO "STRUGGLE BY ALL MEANS AT THEIR DISPOSAL". UK STATED THAT "ALL MEANS" MUST BE QUALIFIED IN SOME WAY, SUCH AS "ALL LEGITIMATE MEANS". LDC DELS ALSO WANTED SPECIFIC REFERENCE TO ART 3(G); US AND UK RESISTED SUCH A REFERENCE ON GROUND THAT DISTINCTION BETWEEN DIRECT AND INDIRECT USES OF FORCE UNDESIRABLE (AND TO AVOID IMPLICATION THAT ALL FORMS OF SUPPORT IN 3(G) LEGITIMATE IN "LIBERATION" STRUGGLE).

4. AS A RESULT OF THIS DISCUSSION, GROUP AGREED TO THINK FURTHER ON FOLLOWING TEXT, AND TO RETURN TO IT LATER:
"NONE OF THE PRECEDING PARAGRAPHS, PARTICULARLY ART 3, MAY BE INTERPRETED AS LIMITING THE SCOPE OF THE CHARTERS PROVISIONS CONCERNING THE RIGHT OF PEOPLES (BEGIN BRACKET) FORCIBLY DEPRIVED OF THEIR INHERENT RIGHTS (END BRACKET) (BEGIN BRACKET) UNDER COLONIAL AND RESCIST REGIMES AND OTHER FORMS OF ALIEN DOMINATION (END BRACKET) TO (BEGIN BRACKET) STRUGGLE BY ALL LEGITIMATE MEANS AT THEIR DISPOSAL (END BRACKET) FOR THEIR SELF-DETERMINATION, FREEDOM AND INDEPENDENCE AND TO RECEIVE SUPPORT IN ACCORDANCE WITH THE PRINCIPLES OF THE CHARTER AND IN CONFORMITY WITH THE DECLARATION ON PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES IN ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS." COMMENT: ADDITION OF "FORCIBLY DEPRIVED" AND "LEGITIMATE" ARE VERY HELPFUL IN OUR VIEW
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AS IS DROPPING OF "MILITARY OCCUPATION", AND DISCUSSION SEEMS TO BE MOVING IN USEFUL DIRECTION. WE WILL, OF COURSE, CONTINUE OUR EFFORTS TO IMPROVE LESS DESIRABLE LANGUAGE IN TEST. END COMMENT.

5. CONTACT GROUP III IS ALSO CONTINUING ITS CONSIDERATION OF ARTS 6 AND 7. DEBATE ON 1ST PARA OF ART 6 CONTINUED, WITH USSR AND MANY LDCS PUSHING STRONGLY FOR IDENTIFYING ALL ACTS OF AGGRESSION AS "CRIMES" AND WEOS ARGUING FOR MORE QUALIFIED STATEMENT.

6. WITH REGARD TO 2ND PARA OF ART 6, ECUADOR AND ROMANIA
PROPOSED SUBSTITUTION OF "USE OF FORCE" FOR "AGGRESSION".
THIS PROPOSAL OPPOSED BY US, USSR AND AUSTRALIA AS INACCURATE
AND AS GOING BEYOND TASK OF DEFINING AGGRESSION.
PRESENT TEXT OF ART 7 RECEIVED BROAD SUPPORT THOUGH MEXICO
INDICATED INSTRUCTION PRESS FOR LIST OF USES OF FORCE WHICH
"ALL COULD AGREE ARE LEGITIMATE". CONTACT GROUP THEN DECIDED
TO CREATE SMALL NEGOTIATING GROUP TO CONSIDER ARTS 6 AND
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